



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316485-23

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<b>Type of Appeal</b>	Appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax
<b>Location</b>	Castleredmond Midleton Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	DRZLT473667464
<b>Appellant(s)</b>	Michael Cashman
<b>Inspector</b>	Rachel Gleave O'Connor

## 1.0 Site Location and Description

- 1.1. The appeal concerns two sites, identified by land parcel IDs: MD-ZLT-03 and MD-ZLT-04 on the RZLT Map. The first site is situated to the south of The Paddocks residential estate, east of the R629 and with frontage onto that road. The second site is situated to the south east of the first site, with frontage onto Geragh Road and situated to the west of one-off housing fronting that road. Between the sites there is agricultural/greenfield areas.

## 2.0 Zoning and other provisions

- 2.1. The site is zoned 'Existing Residential/Mixed Residential and Other Uses' under the Cork County Development Plan 2022-2028. Residential is identified as an appropriate use under the zoning Objective in the Development Plan.

## 3.0 Planning History

- 3.1. No planning history on the site itself.

3.2. Residential Planning Approvals in the wider Midleton Area:

- 22/5104 (25 units) - The Fairways, Tir Cluain, Knockgriffin, Broomfield West, Midleton, approved by Cork County Council on 24/08/2022.
- 22/5839 (400 units) – Water Rock, Midleton, approved by Cork County Council on 22/12/2022, subsequent appeal to ABP withdrawn.
- 21/7264 (284 units) – Lands at Knockgriffin (Imokilly) and Water Rock Midleton, approved by Cork County Council on 13/09/2022, subsequent appeal to ABP withdrawn.
- 21/7265 (434 units) – Knockgriffin (Imokilly), Knockgriffin (Barrymore) Water Rock, Midleton, approved by Cork County Council on 12/09/2022, subsequent appeal to ABP withdrawn.
- 22/4753 (99 units) – Lakeview, Castleredmond, Midleton, approved by Cork County Council on 31/05/2022.

- 21/7428 (97 units) – Lakeview, Castleredmond, Midleton, approved by Cork County Council on 26/05/2022.

#### **4.0 Submission to the Local Authority**

4.1. The appellant made a submission to the Local Authority seeking to have its land removed from the draft map. It stated that:

- The lands are ‘integral to the operation of a business carried out on or beside it, being land that is not vacant or idle.’ The lands form part of a working farm.

#### **5.0 Determination by the Local Authority**

5.1. The local authority provided an evaluation of the site with reference to the RZLT Guidelines, confirming the following:

- Farmyard is not considered to be vacant or idle and therefore does not meet with criteria for inclusion on RZLT Map as set out in Section 653B of the Taxes Consolidation Act 1997. Recommended that the farmyard is excluded from the final map, and the remainder of the site is included in the final map.

#### **6.0 The Appeal**

##### **6.1. Grounds of Appeal**

- Appeal grounds restate the submission to the Local Authority as summarised in section 4 above.

#### **7.0 Local Authority Response**

- The RZLT Guidelines state the following:

*“With reference to land that is included in a development plan or local area plan and is zoned solely or primarily for residential use such as ‘Residential’ or ‘New Residential’, existing uses to be excluded from the scope of mapping for the tax measure must provide a service to the existing or future community, must be an authorised use, must be considered a premises in use by a trade or profession and must be liable to commercial rates.”*

*“For clarity, existing uses such as shops, cafes and similar commercial uses which would be utilised by a residential community on a day-to-day basis and support the sustainable development of the community are considered to be exempted from scope. Use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates.”*

Page 11.

## 8.0 Assessment

- 8.1. The appeal grounds state that the lands are lands are ‘integral to the operation of a business carried out on or beside it, being land that is not vacant or idle.’ With reference to section 653B of the Taxes and Consolidation Act 1997 as amended. The site is formed of lands associated with a farming business.
- 8.2. The Local Authority determined that as the farm yard situated within the site does not constitute vacant or idle lands, it should be removed from the RZLT maps, with the remainder of the site continuing to fall within scope. The map attached to the determination shows the removal of the land occupied by a farming shed and associated hardstanding fronting the R630 from the RZLT map. The parts of the sites occupied by agricultural field were determined to remain in scope.
- 8.3. In the Local Authority Response (section 7 above) to the appeal, reference is made to page 11 of the RZLT Guidelines in respect of lands zoned solely or primarily for residential, and operating uses maybe considered exempt, but that use of land for agricultural or horticultural purposes are not considered to be exempted from scope as they are not subject to rates.
- 8.4. The RZLT Guidelines state on page 12 in respect of operating uses on mixed use zoned lands:

*“With reference to land that is included in a development plan or local area plan and is zoned for a mixture of uses, including residential such as TC-Town Centre, DC-District Centre, RE Regeneration, LC-Local Centre and RV-Rural Village, all land should be excluded from the map unless is it considered ‘vacant or idle’. ‘For clarity, lands on mixed use zonings only fall into scope where residential development is a ‘permitted in principle’ use in that zoning.”*

- 8.5. The site is zoned 'Existing Residential/Mixed Residential and Other Uses'. In their determination, the Local Authority have applied the exemption applicable to sites zoned for a mixture of uses including residential. In the Local Authority response to the appeal, reference is made to exemptions applicable to land zoned solely or primarily for residential use.
- 8.6. The Cork County Development Plan 2022-2028 lists appropriate uses in 'Existing Residential/Mixed Residential and Other Uses' as follows:
- Residential development, residential care, sheltered housing, specialised housing, small scale retail, local centres/ neighbourhood centres, small scale commercial, community facilities, childcare facilities, education facilities, places of worship, civic uses, small scale offices, local medical /healthcare services, marine facilities, sports facilities, recreation and amenity facilities, bed and breakfast/guesthouses/hotels.*
- (Section 18.3.9, pg.397, vol. 1).
- 8.7. The site is therefore zoned for a mixture of uses and I note that there is a zoning under the Development Plan that would fit the criteria of primarily or solely for residential use, being the 'Residential (RE)' zoning, that does not apply to the subject site.
- 8.8. Section 653B (a) states that land to be included for the map should be zoned:
- (ii) for a mixture of uses, including residential use,
- But which is not land-
- (ii) that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle,
- 8.9. The definition of 'vacant or idle land' means land which, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development (within the meaning of the Act of 2000), is not required for, or integral to, the operation of a trade or profession being carried out on, or adjacent to, the land.
- 8.10. As such, the lands maybe considered exempted from scope as there is an operating use (the farming business and its associated lands), which is not vacant or idle, and it is on lands zoned for mixed use.

8.11. The RZLT Guidelines state that agricultural lands cannot be considered exempted from scope with respect to land zoned solely or primarily for residential, and not in relation to mixed use zoning.

8.12. The grounds of appeal do not raise the matter of wastewater infrastructure capacity. Uisce Éireann's wastewater treatment capacity register identifies that Midleton wastewater treatment plant (WWTP) has a 'Red' capacity level, indicating no spare capacity at present. There is no response from Uisce Éireann on the file.

8.13. Section 653B, of the Taxes Consolidation Act 1997 as amended, states that for lands to be included on the map:

*“(b) it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development.”*

8.14. As a result, the subject site is not in scope for the RZLT Maps, in light of existing wastewater treatment capacity to serve the site.

8.15. It should be noted that largescale residential development (LRD) planning applications have been approved in Midleton, on the basis that capacity will be available to serve proposed development following planned infrastructure upgrades; with confirmation of feasibility issued based on planned upgrades. The requirement for LRDs under the Planning and Development Act (as amended 2021), is for *“evidence that Irish Water has confirmed that it is feasible to provide the appropriate service or services and that the relevant network or networks have the capacity to service the proposed development”* (section 32B(e)). The capacity of the Carrigtwohill WWTP was considered sufficient in that regard, with proposals to connect to Carrigtwohill WWTP for those individual applications in discussion with UÉ. Proposals have also included temporary wastewater treatment units to be decommissioned on delivery of upgraded facilities by UÉ. This requirement is distinct from the requirement set out for inclusion for the RZLT which is that service capacity is 'available' for development, with the RZLT Guidelines stating the need for 'existing' capacity. The inclusion of developer-led temporary solutions is outside of the scope of the RZLT in this sense. However, this does not mean that individual planning

applications cannot propose solutions in discussion with UÉ as demonstrated by the planning approvals in the area (see planning history in section 3 above).

- 8.16. In conclusion, the site is zoned 'Existing Residential/Mixed Residential and Other Uses', being a mixture of uses, and is not vacant or idle, and therefore does not meet the criteria for inclusion in the map with reference to section 653B(a)(ii),(ii) of the Taxes Consolidation Act 1997 as amended. In addition, the Midleton WWTP has no capacity to serve new development according to the Uisce Éireann capacity register.

## **9.0 Recommendation**

- 9.1. I recommend that the board set aside the determination of the local authority and allow the appeal.

## **10.0 Reasons and Considerations**

- 10.1. Having regard to the determination by the local authority and the submitted grounds of appeal, the site is zoned 'Existing Residential/Mixed Residential and Other Uses', being a mixture of uses, and is not vacant or idle, and therefore does not meet the criteria for inclusion in the map with reference to section 653B(a)(ii),(ii) of the Taxes Consolidation Act 1997 as amended. In addition, with reference to the provisions of the section 653B of the Taxes Consolidation Act 1997, as amended, and Section 4.1.1 (iii) of the RZLT Guidelines, existing wastewater treatment infrastructure capacity to serve the site has not been demonstrated. As such the site cannot be considered in-scope for the RZLT.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Rachel Gleave O'Connor  
Senior Planning Inspector

18 August 2023